



ATE BOARD OF EQUALIZATION

Assessment Standards Division
N Street, MIC: 64, Sacramento, California
Box 942879, Sacramento, CA 94279-0064)

Phone: (916) 445-4982
FAX: (916) 323-8765

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June 15, 1995

Mr.

Dear Mr.

This is in response to your letter of February 24, 1995, to Mr. John Hagerty regarding the taxable status of a building leased to the County of Alameda for a court house. According to your letter your client owns a building that is leased on a triple net basis to Alameda County for a court house. Alameda County is paying the property taxes on the building. In reviewing the codes you did not find a section that exempts the county from paying the property taxes. You asked for our advice on this matter.

You did not miss anything in your review of the tax codes. There is no general property tax exemption for property leased to a county. If the lessor is a nonprofit charitable organization and leases the property to a county, the property is eligible for exemption pursuant to Section 231 of the Revenue and Taxation Code (all further statutory references are to the Revenue and Taxation Code). If the property is privately owned and the lessor does not qualify as a nonprofit owner as described by Section 231, the property is taxable. The only circumstance of which we are aware that could result in exemption would be if the county is the true owner of the property. Following are discussions of two lease scenarios that affect ownership of property for property tax assessment purposes.

LONG TERM LEASE OF 35 YEARS OR MORE

As you are no doubt aware, if a property is leased for 35 years or more, execution of the lease or assignment of a lease with 35 or more years remaining to a new tenant creates a "change in ownership" for purposes of reassessment. Some have argued that since the property is subject to a change-in-ownership reassessment, the tenant (in this case the County of Alameda) should be considered the owner of the property and therefore the property would be exempt from taxation. For the reasons explained below, we have consistently taken the position that the creation of a leasehold interest in taxable real property for a term of 35 years or more by an exempt governmental agency does not create or transfer "ownership" of the property for tax exemption purposes.

Most exemptions from property tax are found in Article XIII, Section 3, of the California Constitution and in the Revenue and Taxation Code Sections 202-233. Also, Section 5081 describes "exempt property" as property "acquired by" a county or other specified government agencies. Under Section 202, subdivision (4), the governmental entity acquiring such property must be the "owner" of the property for exemption purposes. The "owner" of the property must hold the value of the entire fee. (See *City of Desert Hot Springs v. County of Riverside* (1979) 91 Cal.App.3d 441.)

This standard is not the same as the change in ownership concepts under Proposition 13. For change in ownership purposes under Section 61(c)(1), "ownership" includes possession of a leasehold interest in property for a term of 35 years or more. In *City of Desert Hot Springs v. County of Riverside*, Id., page 449, the court clearly distinguished the difference by explaining:

"It is also well established that when there is a lease to a tax-exempt governmental agency, of land owned by a private owner, the owner is not entitled to have the agency's possessory interest segregated from the owner's reversionary interest, but the owner is properly assessed with the entire value of the property."

Citing another case with a similar set of circumstances, the court noted:

"In *Rothman v. County of Los Angeles*, supra, 193 Cal.App.2d 552, the county had possession under a long term lease from a private owner-lessor. The court . . . held that the taxes were properly assessed to the owner of the entire fee."

Based on the foregoing, we conclude that the lease of a building to the County of Alameda for a court house would not vest "ownership" of the entire fee in the county for purposes of tax exemption under Sections 202 and 5081.

LEASE-PURCHASE AGREEMENT

However, if the lease is similar to the lease-purchase agreement described in *Mayhew Tech Center, Phase II v. County of Sacramento* (1992) 4 Cal.App.4th 497, then the property may be considered "owned" by the county and thus exempt from property taxation under Section 202. The *Mayhew Tech Center* decision deals with the acquisition by the State of California of a new facility for the Franchise Tax Board in Sacramento.

Under the terms of the lease-purchase agreement, the state was required to make specified rental payments over the life of the lease. The state was responsible for all maintenance and repair of the property and any insurance proceeds were available to the state for those purposes. The state was responsible for utilities and services provided on the property and agreed to pay any taxes and assessments levied on it. The title to the property vested in the state automatically at the end of the lease term if the state had made all required payments.

The court concluded at pages 504-507 that the property was exempt from property taxation pursuant to Section 3 of Article XIII of the California Constitution because it was property "owned" by the state. Recognizing that a title clause standing alone is not conclusive of ownership for tax purposes, the court concluded that the state held the essential indicia of ownership and thus, was the equitable owner of the property. In support of this conclusion, the court pointed to the facts that the state held the exclusive right to occupy and use the facility and that the lease provided for automatic vesting of title in the state at the expiration of the lease if all

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rental payments were made. In short, the court found that the true owner of the property was the state, even though legal title resided in the lessor. Since the property was beneficially owned by the state, it was properly treated as a state-owned property for purposes of the constitutional exemption extended by Section 3 of Article XIII.

Since Section 3 of Article XIII exempts both property owned by the state and property owned by a local government (Section 3, subdivisions (a) and (b)), it is reasonable to conclude that the court would have reached the same conclusion had the County of Alameda, rather than the State of California, been the beneficial owner of the property. Thus, where the property is beneficially owned under a lease-purchase agreement, by either the state or local government, the property is exempt from property taxation.

The determination of beneficial ownership is a question of fact which depends upon the terms of each agreement. It is the assessor's responsibility to make the determination of beneficial ownership in any given case.

I hope this information is helpful to you. Please be aware that the views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county.

If you have any questions on this matter, please contact our Real Property Technical Services Section at (916) 445-4982.

Sincerely,



Charles G. Knudsen
Principal Property Appraiser
Assessment Standards Division

CGK:kmc

cc: Honorable John N. Scott
Alameda County Assessor

Prepared by Glenna Schultz

bc: Mr. Richard Ochsner

(916) 445-4588

December 13, 1981

Mr. Ernest R. Eaton
Chief Appraiser
Plumas County Assessor's Office
P. O. Box 1016
Quincy, CA 95971

Dear Ernie:

Recently a problem has arisen concerning the
taxability of privately owned land that is leased to a
local fire district for 99 years.

Since the property is leased rather than owned by
the local government entity, the property is not exempt from
property taxation under Article XIII, Section 3(b) of the
California Constitution.

Notwithstanding the fact the 99 year lease does not
make the fire district the owner of the property, such a lease
does constitute a change in ownership under Section 61(c) of
the Revenue and Taxation Code. Accordingly, this will
require that the property be reappraised when this change
occurs.

Very truly yours,

Glenn L. Rigby
Assistant Chief Counsel

GLR:fr

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Legal Section